

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:* Quail Ridge Amoco #1 )  
 Personal Property Account No. P-151759 ) Shelby County  
 Tax years 2002, 2003, 2004 )

### INITIAL DECISION AND ORDER

### Statement of the Case

The Shelby County Assessor of Property ("Assessor") has made the following back assessments/reassessments of the subject property:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2002	\$69,750	113,070	\$43,320
2003	\$33,000	\$90,540	\$57,540
2004	\$25,200	\$71,970	\$46,770

On September 29, 2005, the taxpayer filed appeals with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on June 22, 2006 in Memphis. The appellant was represented by Mr. Pat Spencer, CPA (Memphis). Assistant Shelby County Attorney Thomas Williams appeared on the Assessor's behalf. Also in attendance at the hearing were Gwendolyn Cranshaw, CPA and Eric Beaupre, CPA, of the Assessor's office, and independent auditor Neill Murphy, of Mendola & Associates, LLC (Knoxville).

The Assessor's representatives moved to dismiss the appeals for tax years 2002 and 2003 on the ground that they were untimely.

### *Findings of Fact and Conclusions of Law*

**Background.** On April 15, 2002, Mohamed T. Ali entered into an agreement with Othman Al-Jafari to purchase the business and inventory of an Amoco service station/convenience store ("Quail Ridge Amoco") in Bartlett. The contract price, which included an option to purchase the land and improvements devoted to this operation, was \$1,478,108.06. From tax years 2001 through 2004, the real property was appraised for ad valorem tax purposes at \$1,059,800.<sup>1</sup>

The tangible personal property account in question was assigned by the Assessor's office to Quail Ridge Amoco. Pursuant to State Board Rule 0600-5-.05, the Assessor

<sup>1</sup>In 2005, a year of reappraisal in Shelby County, the value of the realty was lowered to \$887,100.



commissioned an audit of this account for tax years 2002 through 2004.<sup>2</sup> The audit resulted in back assessments/reassessments for those years in the amounts indicated above. In accordance with Tenn. Code Ann. section 67-1-1005(b), the Assessor's office mailed copies of the certifications of these back assessments/reassessments to the taxpayer on the following dates:

<u>Tax Year</u>	<u>Mailing Date</u>
2002	July 22, 2005
2003	June 13, 2005
2004	July 27, 2005

As the taxpayer's representative candidly explained in an attachment to the appeal forms:

The revised assessment on the audit report was due to the depreciation schedule on the (federal income) tax return.<sup>3</sup> The assets, upon the purchase of the building, land and equipment, were allocated to achieve the most beneficial advantage for (federal income) tax purposes. This had the opposite effect on the personal property assessment.

Mr. Spencer submitted an "Equipment Inventory List," prepared by his client, purporting to show that the total "value as new" of the personal property on the premises of Quail Ridge Amoco was \$70,070. That list did not include the car wash or signage; and the value of the vending machinery and equipment installed on the site was omitted.<sup>4</sup> Further, according to Mr. Murphy's Internet research, the current prices for some of the types of items listed were considerably higher than the indicated values. Based on these findings, the auditor concluded that the taxpayer had substantially under-reported the personal property used (or held for) use at this business location.

**Applicable Law.** Tenn. Code Ann. section 67-1-1005(b) provides (in relevant part) that "[a]ny person aggrieved by a back assessment or reassessment may appeal directly to the state board of equalization within sixty (60) days from the date that a copy of the certification is sent to the taxpayer...."

State Board Rule 0600-5-.06(1) establishes a rebuttable presumption that the fair market value of commercial and industrial tangible personal property (except raw materials, supplies,

---

<sup>2</sup>In 2002, the taxpayer did not file the tangible personal property schedule required by Tenn. Code Ann. section 67-5-903 before the March 1 deadline. Consequently, the Assessor levied a forced assessment on the account for that tax year.

<sup>3</sup>Mr. Spencer was referring to the Internal Revenue Service Form 1040 for tax year 2001 that was filed by the seller of Quail Ridge Amoco (Mr. Al-Jafari). According to that return, the cost basis for the subject property was \$500,000. Al-Jafari reportedly acquired this equipment in September, 2000.

<sup>4</sup>See Tenn. Code Ann. section 67-5-904.



and scrap) is "either the original cost to the taxpayer less straight line depreciation or the residual value, whichever is greater."

As the party seeking to change the current assessment of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

### **Analysis.**

Tax Years 2002 and 2003. It is undisputed that the appeals with respect to tax years 2002 and 2003 were not perfected within the 60-day period allowed by the law. As an administrative agency whose powers are limited to those delegated by the legislature, the State Board is not authorized to waive or extend this statutory deadline. See Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 10. Moreover, even if the State Board had such discretionary authority, it could not justifiably be invoked in this instance. By Mr. Spencer's own admission, the untimely filing of the 2002 and 2003 appeals was due mainly to "oversight" on the taxpayer's part. Hence the Assessor's motion to dismiss those appeals must be granted.<sup>5</sup>

Tax Year 2004. The auditor was undoubtedly justified in picking up the cost basis shown on the aforementioned federal income tax return as the *original cost* of the subject property to the appellant. In the opinion of the administrative judge, the evidence of record is insufficient to overcome the presumption of correctness which attaches to the "standard" valuation of such property (based on rates of depreciation prescribed in Tenn. Code Ann. section 67-5-903). Since the preparer of the list tendered by the appellant's representative was not called to testify at the hearing, that document must be considered *hearsay*.<sup>6</sup> Mr. Spencer, for his part, could not vouch for the accuracy or completeness of the personal property inventory provided by the taxpayer. Nor did the taxpayer produce any invoices, receipts, or other support for the claimed values of the listed items.

### Order

It is, therefore, ORDERED that the taxpayer's appeals of the back assessments/reassessments on the subject account for tax years 2002 and 2003 be dismissed for lack of jurisdiction; and that the back assessments/reassessments on this account for tax year 2004 be affirmed.

---

<sup>5</sup>Even if the 2002 and 2003 appeals had been timely filed, the State Board could not properly have reduced the amounts of the *original* assessments. See Hollywood Cinema (Shelby County, Tax Years 1999 & 2000, Initial Decision and Order, June 13, 2003).

<sup>6</sup>As defined in Tenn. R. Evid. 801(c), *hearsay* is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

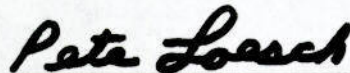


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24<sup>th</sup> day of July, 2006.



---

PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Pat Spencer, CPA  
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

AMOCO.DOC